

Exemption No. 6565

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

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In the matter of the petition of

NATIONAL WARPLANE MUSEUM

for an exemption from
Sections 91.315, 119.5(g), and
119.21(a) of Title 14,
Code of Federal Regulations

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Regulatory Docket No. 28706

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GRANT OF EXEMPTION

By letter dated September 17, 1996, Mr. Richard J. Day, President, Saperston & Day, P.C., Attorneys at Law, 1100 M&T Center, Three Fountain Plaza, Buffalo, New York 14203-1486, petitioned the Federal Aviation Administration (FAA) on behalf of the National Warplane Museum (NWM) for an exemption from Section 91.315 of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would permit the NWM to carry passengers on local flights for compensation or hire in its limited category Boeing B-17 aircraft (B-17) in support of the NWM's fundraising efforts. After reviewing the kind of operation for which an exemption is being requested, the FAA has determined that the NWM also requires relief from 14 CFR Sections 119.5(g) and 119.21(a).

The petitioner requires relief from the following regulations:

Section 91.315 prescribes that no person may operate a limited category civil aircraft carrying persons or property for compensation or hire.

Section 119.5(g) prescribes, in pertinent part, that no person may operate as a commercial operator without an appropriate certificate and appropriate operations specifications.

Section 119.21(a) prescribes, in pertinent part, that each person who conducts operations as a commercial operator engaged in intrastate common carriage of persons for compensation shall comply with the certification and

operations specifications requirements in subpart C of part 119. Subpart C of part 119 describes certification, operation specifications, and other requirements for operations conducted under 14 CFR parts 121 and 135.

The petitioner supports its request with the following information:

The petitioner states that granting this exemption will enable it to afford crew operating experience on and the promotion, preservation, and high maintenance costs of the B-17 for educational and historical purposes.

The petitioner also states that a critical element of its petition is that the opportunity to experience flight in a B-17 is not open to the general public. The donations provided to the NWM are used for the maintenance and restoration of the B-17.

In addition, the petitioner claims that the continued operation of the B-17 for static tours and displays throughout the United States allows the general public to learn about that airplane's important role in our country's history.

The petitioner indicates that it has been granted Section 501(c)(3) status of the Internal Revenue Code by the U.S. Internal Revenue Service, and that the NWM is organized for educational purposes and provides aeronautical education to the general public. It asserts that the continued operation of the B-17 is critical to the NWM's educational, charitable, and other program goals.

The petitioner states that granting this exemption would provide members of the public with the unique opportunity to experience flight in the B-17, and to appreciate the historical significance of that aircraft. Furthermore, the associated benefits to the general public as a result of the operation and display of the airplane are significant. Without the financial support provided to the NWM through donations by the public, the educational and historical aspects of this program will be lost to the public as a whole.

A summary of the petition was published in the Federal Register on November 13, 1996 (61 FR 58277). No comments were received.

The FAA's analysis/summary is as follows:

It is the FAA's policy to ensure that persons who provide air transportation are held to appropriate safety standards. Therefore, an exemption from aviation safety regulations is not granted routinely if the proposed operation can be performed in full compliance with the rules. It is

incumbent upon those requesting an exemption from a particular standard or set of standards that they articulate: 1) an overriding public interest in the operation; and 2) the methods they will employ to guarantee an appropriate level of safety.

In this request for exemption, the petitioner has articulated an overriding public interest in the continued operation of these former U.S. military aircraft. The petitioner also explained in a manner acceptable to the FAA how safety would not be adversely affected. Thus, the FAA has determined (as in recent grants of exemption to the Experimental Aircraft Association and the Collings Foundation) that a grant of the petitioner's request is in the public interest.

The FAA recognizes the NWM's argument that its situation is unique because the only way for a person to actually experience the flight characteristics of the B-17 is to be able to fly in the actual airplane. No other airplane can replicate that experience.

The FAA realizes that there is concern regarding the possible effect that a grant of exemption could have on part 121 and part 135 certificate holders. The FAA notes that those who participate in a flight experience of the B-17 are on board the airplane only to participate in the educational and historical experience, and not for the purpose of transportation, and that the kinds of operations conducted by the NWM with its B-17 would present no competition to part 121 and part 135 certificate holders.

The FAA believes that preserving U.S. aviation history is in the public interest, in the same manner as preserving historic buildings, historic landmarks, and historic neighborhoods is in the public interest. While aviation history can be represented by a static display of aircraft in a museum, in the same way that a historic artifact can be represented in a museum, the public has shown a willingness to support the preservation of these U.S. World War II vintage airplanes to allow the public to experience historic flights in these airplanes.

The petitioner states that it incurs substantial costs in preserving the B-17. To defray these substantial costs, the NWM accepts donations from the public. In exchange for the donations, the public receives the opportunity to ride in the B-17. It is the relationship between donations and the provision of a ride in the B-17 that determines if the airplane is being operated for compensation. For this reason, the NWM needs an exemption from Section 91.315 to continue operating the airplane and ensuring that the public can experience this part of aviation history.

The FAA has determined that it is the unique aspect of preserving the opportunity to obtain flight experience in a B-17 that differentiates the NWM's request from other requests for an exemption from Section 91.315. In other similar requests, the FAA determined that the flight operation could be accomplished by an aircraft that holds a standard airworthiness certificate. In keeping with the FAA's general policy, these requests for exemption were denied. In the NWM's case, if the experience of flight in the B-17 could be accomplished in a standard airworthiness category aircraft, then there would be no compelling reason to grant this exemption. However, that is not the case. By definition, no other airplane can provide the public with the unique opportunity to experience flight in an historic B-17.

The NWM has articulated a compelling argument: it is in the public interest to maintain its U.S. World War II vintage airplane in operational status. The only way it can do so is to accept financial contributions to defray the high costs of maintaining the airplane and crew operating experience. In return, members of the public experience flight in the NWM's B-17.

Regarding the appropriate level of safety, to provide a ride in an aircraft and receive compensation, the FAA normally finds that the operator must comply with part 121 or part 135 of the Federal Aviation Regulations. Through these regulations, the FAA can ensure that an appropriate safety standard is being met.

Part 121 was promulgated to establish the highest levels of safety standards for the carriage of people or property in an aircraft that holds a standard airworthiness certificate. In addition, part 121 establishes appropriate safety standards for operations in which a passenger purchases a ticket and has every reason to expect that the operation conforms to all of those standards. When part 121 was promulgated, the kind of operation proposed in this request was not contemplated. Nonetheless, as written, part 121 is the applicable set of safety standards for the NWM to meet to comply with the regulations. However, the FAA recognizes the NWM's compelling argument that its situation warrants special consideration.

In its petition, the NWM stated that it performs extensive maintenance on its B-17. Its maintenance program has been approved by the FAA, and all work on the airplane is performed by FAA-certificated airframe and powerplant (A&P) mechanics, or performed at an FAA-certificated repair station. While the FAA has stated that former military aircraft can present significant unknowns about safety matters such as life-limited parts and aircraft design, the extensive maintenance and inspection program followed by the

NWM to maintain its airplane minimizes this concern. The FAA has established conditions for an approved maintenance program and inspections for the airplane when it is operated under the terms of this grant of exemption.

In addition, all flight crewmembers are required to meet stringent qualification and training requirements. The FAA has attached certain conditions to this exemption to ensure that NWM is maintaining a highly skilled and qualified cadre of pilots to operate its airplane.

The FAA recognizes that the programs outlined by the NWM for the maintenance and operation of its airplane are not equal to the requirements of part 121. Nonetheless, the FAA has determined that these programs, and the fact that the passengers are familiar with the history and operation of the airplane, establish an appropriate level of safety for this operation.

Although it can be assumed that those who ride on the B-17 are knowledgeable consumers who have made a decision to take part in this flight experience, the FAA believes it is appropriate that the NWM provide specific notice to each passenger that its airplane does not hold a standard airworthiness certificate and that the FAA has authorized this flight under a grant of exemption from Sections 91.315, 119.5(g), and 119.21(a), which are FAA requirements otherwise applicable to large aircraft that carry passengers for compensation.

In addition, to enhance the safety of the flight, the FAA believes it is appropriate to limit these flights to a 50-nautical-mile radius from the departure airport and to restrict landings solely to that departure airport.

As a result of the NWM's request for a grant of exemption, and in anticipation of other requests from similar kinds of operators who have expressed an interest in performing these kinds of operations, the FAA has initiated a formal rulemaking action to provide for operators of U.S. vintage, former military aircraft to provide rides to the public for compensation or hire. The FAA believes that if these operations conform to rules that will be similar to the conditions and limitations contained herein, there will be an adequate degree of aviation safety for the public to be afforded an opportunity to experience a flight in certain U.S. World War II vintage military aircraft.

In consideration of the foregoing, I find that a grant of exemption is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. Sections 40113 and 44701, formerly Sections 313(a) and 601(c) of the Federal Aviation Act of 1958, as amended, delegated to me by the Administrator (14 CFR Section 11.53), the National Warplane Museum is granted an

exemption from 14 CFR Sections 91.315, 119.5(g), and 119.21(a) to the extent necessary to allow the NWM to carry passengers on local flights for compensation or hire in its limited category Boeing B-17 aircraft in support of the NWM's fundraising efforts, subject to the following conditions and limitations:

1. The NWM must continue to maintain its B-17 in accordance with:
 - (a) The maintenance requirements specified in the B-17's type specification sheet, as amended.
 - (b) The FAA-approved maintenance program that meets the requirements of Section 91.409.
 - (c) Appropriate military technical manuals on the B-17.
2. The pilot-in-command crewmember must:
 - (a) Hold at least a commercial pilot certificate with a multiengine airplane rating, an airplane instrument rating, and a B-17 type rating.
 - (b) Have completed the NWM's B-17 qualification and recurrent flight and ground training program within the previous 12 calendar months.
 - (c) Regarding flight experience, have
 - (1) At least a total of 2,500 hours of aeronautical flight experience, including 1,000 hours in multiengine airplanes, of which at least 25 hours must have been in a B-17; or
 - (2) At least a total of 1,000 hours of aeronautical flight experience, including 200 hours in multiengine airplanes, of which at least 100 hours and 50 takeoffs and 50 landings must have been performed in a B-17.
 - (d) Have accomplished three takeoffs and three landings to a full stop in a B-17 within the previous 90 days prior to serving as pilot in command.
3. The second-in-command crewmember must:
 - (a) Hold at least a commercial pilot certificate with a multiengine airplane rating and an airplane instrument rating.
 - (b) Have completed the NWM's B-17 qualification and

recurrent flight and ground training program within the previous 12 calendar months.

(c) Regarding flight experience, have

(1) At least a total of 1,500 hours of aeronautical flight experience, including 250 hours in multiengine airplanes; or

(2) At least a total of 500 hours of aeronautical flight experience, including 100 hours in multiengine airplanes, of which at least 25 hours and 10 takeoffs and 10 landings must have been performed in a B-17.

(d) Have accomplished three takeoffs and three landings to a full stop in a B-17 within the previous 90 days prior to serving as second in command.

4. The NWM must have the services of an FAA-certificated airframe and powerplant mechanic or an appropriately rated repair station available at all stopovers to perform all required maintenance inspections and repairs.

5. The NWM must maintain and make available for review by the FAA upon request, the following records:

(a) The name of each pilot crewmember that the NWM authorizes to conduct flight operations in its B-17 under the terms of this exemption.

(b) Copies of each pilot crewmembers' pilot certificate, medical certificate, qualifications, and documentation indicating completed recurrent training in the B-17 to show compliance with Condition Nos. 2 and 3.

(c) Records of maintenance and inspections performed, for the purpose of showing compliance with Condition No. 1.

(d) A list of all incidents, accidents, or mechanical failures of the airframe, propellers, or engine that occur during the period operations are conducted under this exemption. That list must include the date of each incident/accident/failure, all information on the possible causal factors, and the extent of injuries sustained.

6. Prior to permitting a person to be carried on board its B-17 for the purposes authorized under this grant of

exemption, the NWM must inform that person:

- (a) That its B-17 only holds a limited airworthiness certificate.
- (b) Of the significance of a limited airworthiness certificate when compared with a standard airworthiness certificate, which must include at least the following information:
 - (1) That the FAA has neither established nor approved the standards under which a limited category airworthiness certificated aircraft was built. In contrast, standard category airworthiness certificated aircraft are built to FAA-approved standards, including standards concerning the design of the aircraft and standards concerning life-limited parts; and
 - (2) Limited category airworthiness certificated aircraft are issued when the FAA finds that the aircraft:
 - (i) Has previously been issued a limited category type certificate and the aircraft conforms to that type certificate; and
 - (ii) Is in a good state of preservation and repair and is in a safe operating condition.
 - (3) Standard category airworthiness certificates are issued for an aircraft when the FAA finds that:
 - (i) The aircraft has been built in accordance with that aircraft's type certification standards as established by the FAA;
 - (ii) The aircraft has been maintained in accordance with that aircraft's type certification standards as established by the FAA; and
 - (iii) The aircraft's inspection and maintenance requirements are in compliance with the applicable Federal Aviation Regulations.
- (c) That the FAA has authorized this flight under a grant of exemption from the requirements of

Sections 91.315, 119.5(g), and 119.21(a).

All flight operations shall be conducted:

- (a) At a minimum operating altitude of not less than 1,000 feet above ground level (AGL), except when necessary for takeoff or landing.
- (b) Between the hours of official sunrise and sunset, as established in the American Air Almanac, as converted to local time.
- (c) With a minimum flight visibility of not less than 5 statute miles.
- (d) With a minimum ceiling of not less than 2,000 feet AGL.
- (e) Within a 50-nautical-mile radius of the departure airport, and the only permitted landing shall be at that departure airport.

8. Except for essential crewmembers who are not considered passengers, all flight operations may carry no more than the maximum number of passengers permitted by:

- (a) The aircraft's weight and balance limitations.
- (b) The number of approved seats in the aircraft.

9. Except as provided in Condition No. 10, the NWM's airplane must have the equipment listed in Section 91.205(b), other than the equipment listed in paragraph (b)(15) of that section, and that equipment must be in an operable condition during the flight.

10. The NWM's airplane must have the equipment listed in Section 91.205(b)(11), and that equipment must be in an operable condition during the flight if the airplane is to be operated over water and beyond the power-off gliding distance from shore.

11. The NWM must hold and continue to hold a determination from the U.S. Internal Revenue Service as a Section 501(c)(3) nonprofit, tax-exempt, charitable organization in accordance with Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code.

This exemption terminates on January 31, 1999, unless sooner superseded or rescinded.

/s/ William J. White
Acting Director, Flight Standards Service

Issued in Washington, DC, on December 27, 1996.